



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 23, 1998

Mr. Paul F. Wieneskie
Cribbs & McFarland
P.O. Box 13060
Arlington, Texas 76094-0060

OR98-1516

Dear Mr. Wieneskie:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 116013.

The City of Euless (the "city"), which you represent, received a request for information concerning a kidnapping and rape case that was closed by conviction. We note initially that there was a prior request for this information from the inmate who was convicted in this case. In Open Records Letter No. 98-0097 (1998), we informed you that section 552.028(a) provided that the city was not required "to accept or comply with a request for information from an individual who is imprisoned or confined in a correctional facility."¹

Section 552.101 of the Government Code protects from public disclosure information that is made confidential by law. We note that you have marked some of the records at issue as confidential medical records, access to which is governed by the Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes. Sections 5.08(b) and (c) of the MPA provide:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

¹We note that section 552.028 generally also applies to agents of an inmate who seek information on behalf of the inmate.

(c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the patient's behalf may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

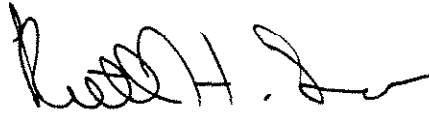
Section 5.08(j)(1) provides for release of medical records upon the patient's written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Section 5.08(j)(3) also requires that any subsequent release of medical records be consistent with the purposes for which the city police department obtained the records. Open Records Decision No. 565 (1990) at 7. We agree that the medical records at issue are confidential in this situation and may not be disclosed to the requestor. Open Records Decision No. 598 (1991). We will address the remaining records at issue.

Section 552.101 also protects from disclosure information about certain types of crimes in which the release of identifying information about the victim and a detailed description of the offense may implicate the victim's common-law privacy interests. In *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), the Texas Supreme Court said that information must be withheld from public disclosure under a common-law right of privacy when the information is (1) highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. The type of information the supreme court considered intimate and embarrassing included information such as that relating to sexual assault. *Id.* See also Open Records Decision No. 539 (1990) at 5 (information concerning emotional state may be protected by common-law privacy).

Thus, in Open Records Decision No. 339 (1982), this office determined that all identifying information in a police report regarding a sexual assault victim must be withheld from disclosure. We listed the non-identifying information that was public and had to be released as: (1) the offense committed, (2) time of occurrence, (3) description of weather, and (4) name of investigating officer. *Id.* at 3. However, because in this situation the requestor knows the victim's identity, release of any of the records at issue would be identifying as to this victim. Thus, the records at issue must be withheld from disclosure. See Open Records Decision No. 393 (1993) (identifying information about child sexual assault victim "inextricably intertwined" with narrative portion of report and so entire report must be withheld).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', with a stylized flourish at the end.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 116013

Enclosures: Submitted documents

cc: Ms. Mary Bailey
210 Linwood
Neosho, Missouri 64850
(w/o enclosures)